

**IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE**

Appl. No. : 10/511,311
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Title: ACCESS ALLOWANCE BASED ON REGIONS

APPEAL BRIEF

Mail Stop **Appeal Brief - Patents**
Commissioner for Patents
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Sir:

In response to the FINAL Office Action dated 8 December 2008, finally rejecting pending claims 1-17 and 21-23, and the Advisory Action dated 19 February 2009, and in support of the Notice of Appeal filed on 9 March 2009, Applicant hereby respectfully submits this Appeal Brief.

REAL PARTY IN INTEREST

According to an assignment recorded at Reel 016503, Frame 0516, Koninklijke Philips Electronics N.V., owns all of the rights in the above-identified U.S. patent application.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences related to this application or to any related application, nor will the disposition of this case affect, or be affected by, any

other application directly or indirectly.

STATUS OF CLAIMS

Claims 18-20 are canceled.

Claims 1-17 and 21-23 are pending in the application.

Claims 1-17 and 21-23 all stand rejected.

Accordingly, the claims on appeal are claims 1-17 and 21-23.

STATUS OF AMENDMENTS

There are no pending amendments with respect to this application.

SUMMARY OF CLAIMED SUBJECT MATTER

The present invention is directed to a device and method of restricting access to content based on the content's region of origin.¹

Accordingly, as broadly recited in claim 1, a device (FIG. 1 – element 10; page 3, lines 5-13) for receiving content (FIG. 1 – element 14; page 3, lines 20-22; page 3 line 27 – page 4, line 3) comprises: a memory (FIG. 1 – element 12; page 3, lines 14-18) which is configured to store a descriptor; and a processor (FIG. 1 – element 18; page 3, line 22) which is configured to read the descriptor and an origin code embedded in the content (page 1, lines 16-18; page 3, lines 22-24); wherein the processor is further configured to allow access of the content only when the descriptor is substantially identical to the origin code (page 1, lines 18-22; page 3, lines 24-26).

As further featured in claim 3, usage rules are further embedded in the content (FIG. 1 – element 14; page 1, lines 20-21; page 4, lines 4-7), and the processor (FIG.

¹ In the description to follow, citations to various reference numerals, figures, and corresponding text in the specification are provided solely to comply with Patent Office rules. It should be understood that these reference numerals, figures, and text are exemplary in nature, and not in any way limiting of the true scope of the claims. It would therefore be improper to import anything into any of the claims simply on the basis of **exemplary** language that is provided here only under the obligation to satisfy Patent Office rules for maintaining an Appeal.

1 – element 18) is further configured to read the usage rules and determine the access of the content based on the usage rules (page 4, lines 8-10 and 28-32).

As further featured in claim 4, usage rules are embedded in the content (FIG. 1 – element 14; page 1, lines 20-21; page 4, lines 4-7), and the processor (FIG. 1 – element 18) is configured to obey the usage rules in determining the access of the content (page 4, lines 8-10 and 28-32).

As broadly recited in claim 9, a method is provided for accessing of content (FIG. 1 – element 14; page 3, lines 20-22; page 3 line 27 – page 4, line 3) of a device (FIG. 1 – element 10; page 3, lines 5-13). The method comprises: reading a descriptor embedded in the device (page 1, lines 16-18; page 3, lines 14-16 and 22-23; page 4, lines 24-26); reading an origin code embedded in the content (page 1, lines 16-18; page 3, lines 20-24 & 27-33; page 4, lines 24-26); comparing the descriptor with the origin code (page 1, line 18; page 3, lines 24-26; page 4, lines 24-26); and allowing access of the content only when the descriptor and the origin code are substantially identical (page 1, lines 18-22 & 24-26; page 3, lines 24-26; page 4, lines 26-27).

As further featured in claim 11, the method further comprises reading usage rules embedded in the content (FIG. 1 – element 14; page 1, lines 20-21; page 4, lines 4-7); and determining the access of the content based on the usage rules (page 4, lines 8-10 and 28-32).

As further featured in claim 12, the method further comprises reading usage rules embedded in the content (FIG. 1 – element 14; page 1, lines 20-21; page 4, lines 4-7); and obeying the usage rules in determining the access of the content (page 4, lines 8-10 and 28-32).

As broadly recited in claim 21, a device (FIG. 1 – element 10; page 3, lines 5-13) for accessing received content (FIG. 1 – element 14; page 3, lines 20-22; page 3 line 27 – page 4, line 3) comprises: a memory (FIG. 1 – element 12; page 3, lines 14-18) storing a descriptor therein, wherein the descriptor cannot be written into the memory by a user of the device and cannot be changed by a user of the device (page 3, lines 17-19); means (FIG. 1 – element 18; page 1, lines 16-18; page 3, lines 14-16 and 22-23; page 4, lines 24-26) for reading the descriptor stored in the

memory; means (FIG. 1 – element 18; page 1, lines 16-18; page 3, lines 20-24 & 27-33; page 4, lines 24-26) for reading an origin code embedded in the received content, the origin code identifying a geographical area of origin of the received content (page 1, line 22; page 3, lines 15-16); means (FIG. 1 – element 18; page 1, line 18; page 3, lines 24-26; page 4, lines 24-26) for comparing the descriptor with the origin code; and means (FIG. 1 – element 18; page 1, lines 18-22 & 24-26; page 3, lines 24-26; page 4, lines 26-27) for denying access to the received content when the descriptor and the origin code are not substantially identical.

As further featured in claim 22, the device further comprises means (FIG. 1 – element 18; page 1, lines 20-21; page 4, lines 4-7 & 28-32) for reading usage rules embedded in the received content (FIG. 1 – element 14; page 1, lines 20-21; page 3, lines 22-24; page 4, lines 4-7); wherein the means (FIG. 1 – element 18; page 1, lines 18-22 & 24-26; page 3, lines 24-26; page 4, lines 26-27) for denying access of the received content deny the access of the content based on the usage rules (page 1, lines 20-21; page 4, lines 8-10 & 28-32).

As further featured in claim 23, the origin code identifies a time zone of a location corresponding to the origin of the content (FIG. 1 – element 14; page 4, lines 4-7), and wherein the means (FIG. 1 – element 18; page 1, lines 18-22 & 24-26; page 3, lines 24-26; page 4, lines 26-27) for denying access to the received content denies access when the time zone of the origin code does not match a time zone of the descriptor stored in the memory (FIG. 1 – element 12; page 4, line 29 – page 5, line 10).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection to be reviewed on Appeal are: (1) the rejections of claims 1-2, 6, 9-10, 14, 17 and 21 under 35 U.S.C. § 103 over Fleming et al. U.S. Patent 6,449,766 ("Fleming") in view of Whitelaw et al. U.S. Patent 6,944,876 ("Whitelaw"); (2) the rejections of claims 3-5, 11-13 and 22 under 35 U.S.C. § 103 over Fleming in view of Whitelaw and further in view of Siegel et al. U.S. Patent Publication 2003/0056212 ("Siegel"); and (3) the rejections of claims 7-8, 15-16 and 23 under 35 U.S.C. § 103 over Fleming in view of Whitelaw and further in view of

Yuen et al. U.S. Patent 6,583,825 ("Yuen").

ARGUMENTS

(1) Claims 1-2, 6, 9-10, 14, 17 and 21 Are Patentable Over Fleming & Whitelaw

Applicant relies on at least the following standards with regard to proper rejections under 35 U.S.C. § 103(a). First, a rejection on obviousness grounds under 35 U.S.C. § 103 cannot be sustained by mere conclusory statements: instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also KSR International Co. v. Teleflex Inc., 550 U.S. 398, 82 USPQ2d 1385, 1396 (2007) (quoting Federal Circuit statement with approval). Second, there must be a reasonable expectation of success. *"The mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art."* MPEP § 2143.01(III) (citing KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385, 1396 (2007)). Finally, the prior art reference (or references when combined) must disclose all of the claim limitations. *"All words in a claim must be considered in judging the patentability of that claim against the prior art."* MPEP § 2143.03 (citing In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)).

Claim 1

Among other things, the device of claim 1 includes a processor which is configured to read an origin code embedded in content received by the device.

The Examiner states that Fleming discloses in col. 9, lines 22-30 that *"the region code, represents a region, is included in the signal."*

Applicant respectfully disagrees.

As described in Applicant's specification, and featured in claim 1, an origin code embedded in content identifies a geographic region where the associated content originates (see, e.g., page 1, line 22; page 3, lines 28-31; page 5, lines 3-8).

As recited in claim 1, the origin code is **"embedded in content received by the device."**

In contrast, col. 9, lines 22-30 of Fleming describes a "Region field" 402(1)(e)

in a data structure 300 that is created and stored in memory by Fleming's system before the system receives any content (see, e.g., col. 11, lines 19-22; col. 12, lines 14-15). Fleming does not disclose any processor that is configured to read an origin code embedded in content received by the device, as recited in claim 1.

Therefore, no combination of Fleming and Whitelaw could produce the device of claim 1.

Also among other things, the device of claim 1 includes a processor configured to allow access to received content only when a descriptor stored in a memory of the device is substantially identical to an origin code embedded in the received content.

The Examiner fails to cite anything in any of the prior art references which discloses or suggest this feature.

Instead, the Examiner states that Fleming discloses matching "rating information provided in the multimedia program with the rating stored in the data structure" (emphasis added). That is, Fleming discloses a system of limiting access to content based on the content's rating (e.g., G, PG, PG-13, R, NC-17, etc.).

Of course, that is not what Applicant claims.

Applicant claims a device including a processor configured to allow access to received content only when a descriptor stored in a memory of the device is substantially identical to an origin code, indicative of the origin of the content, embedded in the received content.

So, again, no combination of Fleming and Whitelaw could produce the device of claim 1.

Also, as explained in further detail below, Applicant also respectfully traverses the proposed combination of Fleming and Whitelaw.

RESPONSE TO "RESPONSE TO ARGUMENTS" IN FINAL OFFICE ACTION

In the "Response to Arguments" section of the FINAL Office Action, the Examiner states that:

"Fleming further discloses (col. 11, lines 19-32) that once the rating system with region code is properly stored in the memory of the receiver, CPU in the client device identifies rating of multimedia program by extracting rating (region information) from the multimedia program and reading this region information to match it with the stored region information as represented in FIG. 5"

Applicant respectfully disagrees. Applicant submits that Fleming only teaches comparison of a received program's content rating (e.g., G, PG, PG-13, R, NC-17, etc.) with rating information stored in a device's memory, but does not teach or suggest comparison of a received program's origin code with any origin information stored in a device's memory. Indeed, Applicant respectfully submits that Fleming fails to teach or suggest that any origin code should even be included in any received content at all. That is, while Fleming is concerned with limiting access to content depending on the content's rating, the device of claim 1 has a different objective – using an origin code embedded in content to prevent access to the content by anyone located outside the content's intended region(s), regardless of the content's rating.

In the cited text at col. 11, lines 19-32, Fleming discloses that once the rating systems are represented in the memory 400 in a flexible data structure, then the client system uses the flexible data structure to identify the actual rating of the content of a multimedia program by, for example, extracting the rating from the multimedia program – for example by extracting the rating from line 21 of the vertical blanking interval (VBI) of an NTSC video signal.

Applicant respectfully submits that the Examiner appears to be confusing the flexible data structure that is used for storing rating system information in memory in a device in Fleming, and the actual rating itself that is included in a received broadcast signal.

The flexible data structure for storing rating system information in memory in Fleming does indeed include a region field 402(1)(e). The flexible data structure also

includes a host of other information, including: an icon field 402(1)(c) which may include a graphics files (e.g., JPG or BMP) that identifies a rating system; an informal field 402(1)(d) which may include an Internet address of a Web page that describes the rating system; and other information fields 402(1)(g) "*which may contain any imaginable information concerning the rating system*" that may be useful to a user.

Fleming in no way discloses or suggests that any received content also includes any or all of this other information that is stored all of those fields. Fleming in no way discloses or suggests that that any comparison is made using any or all such information in order to govern user access to any received content. For example, there is nothing in Fleming which discloses or suggests that any broadcast signal also includes an icon, an Internet address of a Web page that describes the rating system, or a host of other things that are stored in the rating system information table in the device. More specifically, there is nothing in Fleming which discloses or suggests that a broadcast signal includes **the region from which the program originates**, or that any device compares such information with any corresponding descriptor stored in memory in order to govern user access to the content.

Indeed, this should not be surprising. Fleming is not concerned with restricting any access to a program based on a geographic region from which a program originated. Instead, Fleming is concerned with providing a system which extracts rating information (e.g., G, PG, PG-13, R, NC-17) from programs that have been rated using a wide variety of different and inconsistent rating systems.

So Applicant respectfully submits that no combination of Fleming and Whitelaw could produce the device of claim 1.

Applicant also respectfully traverses the proposed combination of Fleming and Whitelaw.

In the FINAL Office Action, the Examiner invited Applicant to point out deficiencies in the proposed combination of references.

At the outset, Applicant respectfully submits that the Examiner fails to establish the level of ordinary skill in the art of invention of claim 1. This is a fundamental requirement for maintaining a rejection under 35 U.S.C. § 103. See

M.P.E.P. §§ 2141(II)(C) and 2141.03. Thus the Office Action fails to perform the analysis required by KSR International Co. v. Teleflex Inc., 550 U.S. 398, 82 USPQ2d 1385 (2007) ("KSR") for rejecting a claim under 35 U.S.C. § 103.

Furthermore, a rejection on obviousness grounds under 35 U.S.C. § 103 cannot be sustained by mere conclusory statements: instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. See M.P.E.P. § 2142 (quoting In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006) and KSR 82 USPQ2d at 1396 (2007) (quoting Federal Circuit statement with approval)).

Applicant respectfully submits that the proposed combination of Fleming and Whitelaw to attempt to construct the method of claim 1 is not based on an articulated reasoning with any rational underpinnings, but instead is based on conclusory statements which lack reason.

In the FINAL Office Action, the Examiner provides as a supposed reason of the proposed combination: "*so the only authorized user of the device can access the programming content.*"

However, Applicant respectfully submits that this proposed combination makes no sense for at least two reasons.

First, claim 1 recites allowing access to received content only when a descriptor stored in memory is substantially identical to an origin code embedded in the content received by the device. This has nothing to do with who the user of the content is, or with insuring that "*only authorized user of the device can access the programming content.*" So the proposed modification of Fleming would not produce the stated objective.

Second, Whitelaw does not even disclose in the cited text that a content-based indicator received in a signal is compared to a content-based indicator stored in memory so that "*only authorized user of the device can access the programming content.*" Instead, the cited text at col. 1, lines 33-35 specifically teaches that: "*Yet other lock systems serve to make the entirety of the system unavailable to authorized users.*" That is, the entire system is locked out to an unauthorized user, regardless of the content. In such a case, there would be no reason for any

comparison of a content-based indicator received in a signal to anything.

Accordingly, for at least these reasons, Applicant respectfully submits that claim 1 is patentable over the cited art, and respectfully requests that the rejection of claim 1 be withdrawn and that claim 1 be allowed.

Claims 2 and 6

Claims 2 and 6 depend from claim 1 and are deemed patentable for at least the reasons set forth above with respect to claim 1.

Claim 9

Among other things, the method of claim 9 includes comparing a descriptor embedded in content with an origin code, and allowing access of the content only when the descriptor and the origin code are substantially identical.

As explained above with respect to claim 1, Applicant respectfully submits that no possible combination of the cited art suggests such an operation. Furthermore, for the same reasons as set forth above with respect to claim 1, Applicant also respectfully traverses the proposed combination of Fleming and Whitelaw.

Accordingly, for at least these reasons, Applicant respectfully submits that claim 9 is patentable over the cited art, and respectfully requests that the rejection of claim 9 be withdrawn and that claim 9 be allowed.

Claims 10, 14 and 17

Claims 10, 14 and 17 depend from claim 9 and are deemed patentable for at least the reasons set forth above with respect to claim 9.

Claim 21

Among other things, the device of claim 21 includes means for reading an origin code embedded in received content, the origin code identifying a geographical area of origin of the received content; and means for the origin code with a descriptor stored in a memory of the device.

As explained above with respect to claim 1, Applicant respectfully submits that no possible combination of the cited art suggests any device that includes the means recited above. Furthermore, for the same reasons as set forth above with respect to claim 1, Applicant also respectfully traverses the proposed combination of Fleming and Whitelaw.

Accordingly, for at least these reasons, Applicant respectfully submits that claim 21 is patentable over the cited art, and respectfully requests that the rejection of claim 21 be withdrawn and that claim 21 be allowed.

(2) Claims 3-5, 11-13 and 22 are Patentable over Fleming, Whitelaw & Siegel

Claims 3-5, 11-13 and 22 depend variously from claims 1, 9 and 21.

Applicant respectfully submits that Siegel does not remedy the shortcomings of Fleming and Whitelaw as set forth above with respect to claim 1, 9 and 21. Therefore, Applicant respectfully submits that claims 3-5, 11-13 and 22 are all patentable over the cited art for at least the reasons set forth above with respect to claims 1, 9 and 21, respectively, and for the following additional reasons.

Claims 3, 4, 11, 12 & 22

Among other things, in the methods of claims 3 & 4, usage rules are further embedded in received content. In claim 3, the processor is further configured to read the usage rules and determine the access to the content based on the usage rules. In claim 4, the processor is further configured to obey the usage rules in determining the access of the content.

In the FINAL Office Action, the Examiner fairly admits that neither Fleming nor Whitelaw nor any combination thereof discloses or suggests these features pertaining to usage rules.

However, in the FINAL Office Action the Examiner states that Siegel discloses in paragraph [0008] that the audio/video contents transmitted to a customer includes a usage rule.

Applicant respectfully disagrees. Applicant sees nothing in paragraph [0008] of Siegel that discloses that any audio/video contents transmitted to a customer actually include a usage rule. Instead, Applicant respectfully submits that paragraph [0008] of Siegel merely discloses that content may be transferred to a user in accordance with a usage rule. Meanwhile, claims 3 & 4 actually recite that usage rules are embedded in the content. Applicant does not see any disclosure in Siegel of the embedding of such usage rules in content. Indeed, the Examiner does not even appear to bother to assert that Siegel discloses such a feature.

In the FINAL Office Action, the Examiner also states that Siegel discloses a “usage rule as represented in Fig. 8.” FIG. 8 of Siegel is a block diagram of a general purpose computer. Applicant respectfully submits that it does not “represent” any usage rule.

Accordingly, for at least these additional reasons, Applicant respectfully submits that no combination of Fleming, Whitelaw and Siegel could ever produce the devices and methods of claims 3-5, 11-13 and 22.

Therefore, Applicant respectfully requests that the rejections of claims 3-5, 11-13 and 22 be withdrawn and that claims 3-5, 11-13 and 22 be allowed.

(3) Claims 7-8, 15-16 and 23 Are Patentable over Fleming, Whitelaw & Yuen

Claims 7-8, 5-16, and 23 depend variously from claims 1, 9 and 21.

Applicant respectfully submits that Yuen does not remedy the shortcomings of Fleming and Whitelaw as set forth above with respect to claim 1, 9 and 21. Therefore, Applicant respectfully submits that claims 3-5, 7-8, 11-14, 15-16, and 22-23 are all patentable over the cited art for at least the reasons set forth above with respect to claims 1, 9 and 21, respectively, and for the following additional reasons.

Claim 23

Among other things, the device of claim 23 includes means for denying access to received content when a time zone of an origin code embedded in the received content does not match a time zone of a descriptor stored in a memory of the device.

Applicant sees nothing where the Examiner even alleges that anything in Fleming, Whitelaw and Yuen – or any combination thereof – teaches denying access to received content when a time zone of an origin code embedded in received content does not match a time zone of a descriptor stored in the memory.

Accordingly, for at least these additional reasons, Applicant respectfully submits that no combination of Fleming, Whitelaw and Yuen contains all of the elements of the device of claim 23.

Therefore, Applicant respectfully requests that the rejections of claims 7-8, 5-16, and 23 be withdrawn and that claims 7-8, 5-16, and 23 be allowed.

In conclusion, for all of the foregoing reasons, Applicant respectfully submits that claims 1-17 and 21-23 are all patentable over the cited prior art. Therefore, Applicant respectfully requests that the rejections of claims 1-17 and 21-23 be withdrawn, the claims be allowed, and the application be passed to issue.

Respectfully submitted,

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CLAIMS APPENDIX

1. (Previously Presented) A device for receiving content comprising:
a memory which is configured to store a descriptor; and
a processor which is configured to read said descriptor and an origin code
embedded in said content;

wherein said processor is further configured to allow access of said content
only when said descriptor is substantially identical to said origin code.

2. (Previously Presented) The device of claim 1, wherein said processor is
further configured to allow at least one of video signals of said content to be
displayed onto a screen and audio signals of said content to be heard on a speaker
when said descriptor is substantially identical to said origin code.

3. (Previously Presented) The device of claim 1, wherein usage rules are
further embedded in said content; said processor being further configured to read
said usage rules and determining said access of said content based on said usage
rules.

4. (Previously Presented) The device of claim 1, wherein usage rules are
embedded in said content; said processor being configured to obey said usage rules
in determining said access of said content.

5. (Previously Presented) The device of claim 4, wherein said usage rules are
related to allow said access of said content based on said origin code and said
descriptor.

6. (Previously Presented) The device of claim 1, wherein said descriptor
includes a region code indicative of a region said device is useable, and said origin
code is related to an origin of said content.

7. (Previously Presented) The device of claim 1, wherein said descriptor includes a device time zone indicative of regions said device is useable, and said origin code includes a content time zone indicative of an origin of said content.

8. (Previously Presented) The device of claim 7, wherein said device time zone is obtainable from a timing module of said device.

9. (Previously Presented) A method for accessing of content of a device comprising:

- reading a descriptor embedded in said device;
- reading an origin code embedded in said content;
- comparing said descriptor with said origin code; and
- allowing access of said content only when said descriptor and said origin code are substantially identical.

10. (Previously Presented) The method of claim 9, wherein said allowing act allows at least one of video signals of said content to be displayed onto a screen and audio signals of said content to be heard on a speaker when said descriptor is substantially identical to said origin code.

11. (Previously Presented) The method of claim 9, further comprising:
reading usage rules embedded in said content; and
determining said access of said content based on said usage rules.

12. (Previously Presented) The method of claim 9, further comprising:
reading usage rules embedded in said content; and
obeying said usage rules in determining said access of said content.

13. (Previously Presented) The method of claim 12, wherein said usage rules are related to allowing said access of said content based on said origin code and said descriptor.

14. (Previously Presented) The method of claim 9, wherein said descriptor includes a region code indicative of a region said device is useable, and said origin code is related to an origin of said content.

15. (Previously Presented) The method of claim 9, wherein said descriptor includes a device time zone indicative of regions said device is useable, and said origin code includes a content time zone indicative of an origin of said content.

16. (Previously Presented) The method of claim 15, further comprising obtaining said device time zone from a timing module of said device.

17. (Previously Presented) The method of claim 9, further comprising:
storing said descriptor in a memory of said device; and
embedding an origin code in said content.

21. (Previously Presented) A device for accessing received content comprising:

- a memory storing a descriptor therein, wherein the descriptor cannot be written into the memory by a user of the device and cannot be changed by a user of the device;

- means for reading the descriptor stored in the memory;

- means for reading an origin code embedded in said received content, said origin code identifying a geographical area of origin of said received content;

- means for comparing said descriptor with said origin code; and

- means for denying access to said received content when said descriptor and said origin code are not substantially identical.

22. (Previously Presented) The device of claim 21, further comprising means for reading usage rules embedded in said received content; wherein said means for

denying access of said received content deny said access of said content based on said usage rules.

23. (Previously Presented) The device of claim 21, wherein the origin code identifies a time zone of a location corresponding to the origin of said content, and wherein the means for denying access to said received content denies access when the time zone of the origin code does not match a time zone of the descriptor stored in the memory.

EVIDENCE APPENDIX

{None}

RELATED PROCEEDINGS APPENDIX

{None}